ARKANSAS SUPREME COURT

No. CR 06-426

NOT DESIGNATED FOR PUBLICATION

JOHN A. BUFFINGTON
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered **May 11, 2006**

PRO SE MOTION FOR BELATED APPEAL [CIRCUIT COURT OF OUACHITA COUNTY, CR 2003-156, HON. EDWIN KEATON, JUDGE]

MOTION TREATED AS MOTION FOR RULE ON CLERK AND DENIED; REQUEST FOR WRIT OF *CERTIORARI* MOOT

PER CURIAM

In 2003, petitioner John A. Buffington entered a plea of guilty to sexual assault in the second degree and was sentenced to 120 months' imprisonment.[1] Subsequently, petitioner timely filed in the trial court a *pro se* petition for postconviction relief pursuant to Criminal Procedure Rule 37.1. After a hearing in 2004, the court denied the petition. No appeal was taken from the order.

In 2005, petitioner filed in the trial court a *pro se* petition for postconviction relief styled, "Rule 37 Petition Rehearing." The petition was denied on September 14, 2005, on the ground that it was an unauthorized second petition and, as such, specifically prohibited by Ark. R. Crim. P. 37.2(b). Petitioner filed a notice of appeal from the order on September 28, 2005, but he did not tender the record to this court within ninety days of the date of the notice of appeal as required by

[1]An amended judgment was entered on August 15, 2005, that deleted a notation on the original judgment that indicated that petitioner was on parole when the offense was committed and that credited him with eighteen days against the original sentence for time served in custody.

Ark. R. App.-Civil 5(a). On April 19, 2006, petitioner submitted a partial certified record of the lower court proceedings and filed the instant motion seeking leave to lodge the record belatedly and proceed with an appeal of the trial court's September 14, 2005, order. As the notice of appeal was timely filed, we treat the motion as a motion for rule on clerk. *See Johnson v. State*, 342 Ark. 709, 30 S.W.3d 715 (2000) (*per curiam*); *see also Muhammed v. State*, 330 Ark. 759, 957 S.W.2d 692 (1997) (*per curiam*).

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (*per curiam*). With that right, however, goes the responsibility to file a timely notice of appeal and tender the record here within the time limits set by the rules of procedure. If a petitioner fails to tender the record in a timely fashion, the burden is on the petitioner to make a showing of good cause for the failure to comply with proper procedure. *See Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (*per curiam*). The fact that a petitioner is proceeding *pro se* does not constitute good cause for the failure to conform to the prevailing rules of procedure. *Walker v. State*, 283 Ark. 339, 676 S.W.2d 460 (1984) (*per curiam*); *Thompson v. State*, 280 Ark. 163, 655 S.W.2d 424 (1983) (*per curiam*); *see also Sullivan v. State*, 301 Ark. 352, 784 S.W.2d 155 (1990) (*per curiam*).

Petitioner here asserts that he should be permitted to lodge the record belatedly because he was not represented by counsel at the hearing held on the original Rule 37.1 petition in 2004 and thus his constitutional right to counsel was violated in that proceeding.[2] He further notes that he diligently pursued an appeal from the September 14, 2005, order by filing a notice of appeal and

[2]Petitioner did not include the 2004 order in the partial record submitted with the motion for belated appeal and makes no reference in the motion for belated appeal for his failure to perfect an appeal from that order.

sending letters to the circuit clerk and to a staff attorney for this court.

We first note that there is no constitutional right to counsel in a postconviction proceeding. *See Pennsylvania v. Finley*, 482 U.S. 551 (1987); *see also Dyer v. State*, 258 Ark. 494, 527 S.W.2d 622 (1975). Moreover, whether petitioner was represent by counsel on the original Rule 37.1 proceeding is not germane to a consideration of whether he has demonstrated good cause for his failure to perfect the appeal from the September 14, 2005, order by tendering the record to this court in a timely manner. Even if a *pro se* petitioner is not knowledgeable about appellate procedure, mere unfamiliarity with legal procedure on the part of the *pro se* litigant does not excuse the late tender of a record. *See Leavy v. Norris,* 324 Ark. 346, 920 S.W.2d 842 (1996) (*per curiam*). The fact that petitioner may have corresponded with the circuit clerk or one of our staff attorneys is not an explanation of his failure to perfect the appeal. It is not the responsibility of the circuit clerk, or anyone other than the *pro se* party desiring to appeal, to perfect the appeal. *See Sullivan v. State*, *supra*.

The purpose of the rule setting time limitations on lodging a record is to eliminate unnecessary delay in the docketing of appeals. We have made it abundantly clear that we expect compliance with the rule so that appeals will proceed as expeditiously as possible. *Jacobs v. State*, 321 Ark. 561, 906 S.W.2d 670 (1995) (*per curiam*), citing *Alexander v. Beaumont*, 275 Ark. 357, 629 S.W.2d 300 (1982) (*per curiam*). As it was the duty of the petitioner to tender the record to this court in a timely manner, and he has not established good cause for his failure to do so, the motion to proceed with the appeal is denied.

Motion for belated appeal treated as motion for rule on clerk and denied; request for writ of *certiorari* moot.